

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/ Respondent,

Case No. 13-cr-20704-01

v

Honorable Thomas L. Ludington

D-1, TRADVIS DEMARR WILLIAMS,

Defendant/ Petitioner.

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION, DENYING  
PETITIONER'S MOTION TO VACATE SENTENCE, DENYING CERTIFICATE OF  
APPEALABILITY, AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS**

On September 25, 2012 an indictment was issued charging Petitioner Tradvis Demarr Williams and three co-defendants with various charges arising out of an alleged conspiracy to possess with intent to distribute cocaine, cocaine base, and heroin. After a superseding indictment was issued on April 9, 2014, on April 18, 2014 Williams pleaded guilty to one count of aiding and abetting the possession with intent to distribute 28 grams or more of a mixture containing cocaine base in violation of §§ 841(a)(1) and 841(b)(1)(B). On August 27, 2014 Williams was sentenced as a career offender to 270 months' imprisonment. Judgment was entered on September 3, 2014, and Williams did not file any direct appeal. *See* ECF No. 104.

Almost two years later, on August 16, 2016, Petitioner Williams filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, arguing that his sentence was rendered unconstitutional by the Supreme Court's decision *Johnson v. United States*, 135 S. Ct. 2551, 2562, 192 L. Ed. 2d 569 (2015) (striking down the residual clause of the Armed Career Criminal Act as unconstitutionally vague in violation of the due process clause of the Fifth Amendment).

See ECF No. 19. Williams's motion was referred to Magistrate Judge Patricia T. Morris. See ECF No. 180. On May 18, 2017 the magistrate judge issued her report, recommending that William's motion to vacate be denied. See ECF No. 196. The magistrate judge based her recommendation on the Supreme Court's decision in *Beckles v. United States*, in which the court held that the sentencing guidelines are not subject to void for vagueness challenges under the Fifth Amendment Due Process clause. See *Beckles v. United States*, No. 15-8544, 2017 WL 855781, at \*3 (U.S. Mar. 6, 2017). In other words, the Supreme Court definitively held that petitioners challenging their career offender status under the sentencing guidelines could not rely on the rule articulated in *Johnson*.

Although the magistrate judge's report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither party has filed any objections. The election not to file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. As such, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted in this case. The Court further concludes that Petitioner should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. See Fed. R. App. P. 24(a).

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 196, is **ADOPTED**.

It is further **ORDERED** that Petitioner Williams's motion to vacate his sentence, ECF No. 177, is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that leave to proceed *in forma pauperis* on appeal is **DENIED**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: June 15, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 15, 2017.

s/Kelly Winslow  
KELLY WINSLOW, Case Manager